

THAW FEARS ASYLUM

Possibility of Lunacy Commission Alarms Defense.

LAWYERS HOLD CONFERENCE

Counsel Formulate Plans to Fight District Attorney Jerome's Effort to Have Accused Declared Insane—Prosecutor Receives Letters Written by Defendant.

New York, March 2.—The fear of the appointment of a lunacy commission to decide whether or not Harry K. Thaw is sane, pervaded the entire defense to-day, including Thaw himself.

Everything within the last few days has pointed to just one thing: District Attorney Jerome is going to use every effort to have Thaw examined by a commission. It is not settled yet just how Jerome will proceed to have the commission appointed, but it may come to the point where he will lay before the court evidence in his possession on which to base the belief that Thaw is not sane now.

Those who have talked with Jerome have got a firm impression that he believes, on what he knows now, without having had the chance of having his experts examine him, that Thaw is insane. Jerome fixes this belief on several things, some of which have not become public during the trial. The most interesting collection of papers which Jerome has received are twenty-one letters written by Thaw to J. Deniston Lyon, a Pittsburgh banker, since the killing of Stanford White. Several of the letters were written during the trial. From what has been learned in this city and from Pittsburgh about the letters it would seem that they were not written by a man in the possession of all his mental faculties.

Thaw Accuses Reporters.

In some of the letters Thaw refers to a conspiracy on the part of some reporters attending the trial to hurt his case. He has also prepared a list of the names of those who he describes as "friendly" and the ones that are "unfriendly." Thaw also speaks in a sort of rambling way about the conduct of his case, and asks the opinion of Mr. Lyon on some of the jurors. When the letters about the jurors had been written Banker Lyon had not been to this city, and knew nothing about them except what he had seen in the newspapers.

It is within the discretion of the court to appoint a lunacy commission. When a man goes to trial it is presumed that he is sane and able to advise with his counsel. On that ground the lawyers for the defense will make their stand against the appointment of any commission. They will contend that Thaw is sane now and that he is thoroughly able to advise with them and look after his interests.

Lawyers Hold Conference.

Thaw's lawyers, Hartridge, Delmas, Peabody, and O'Reilly, had a conference to-day at which plans were formed to fight the appointment of a commission. After it was over Mr. Hartridge said: "We are not afraid of any application for a commission. We are ready to fight it and we feel certain that a commission will never be appointed. We are perfectly satisfied with the defense that has been made, and we are confident of the acquittal of Thaw."

District Attorney Jerome believes that the symptoms of adolescent insanity described by Dr. Britton D. Evans on the stand are typical of paranoia, of the form which authorities say is incurable and soon results in the patient becoming demented.

Just how much further Jerome will go with the examination of Dr. Evans he does not know. It all depends on what Judge Justice Fitzgerald will make on Monday in regard to whether Dr. Evans can testify as to the writings and opinions of experts on the subject of insanity. Jerome contends that this has been done by experts in every murder trial of recent years and such evidence has always been held to be admissible on the question of testing the knowledge and general qualifications of the expert. Jerome and Garvin worked a part of to-day in preparing cases which were submitted to Justice Fitzgerald for his consideration.

Thaw Seems Depressed.

When Thaw read the newspapers in the Tombs to-day he was not very much pleased. All accounts of the trial told him that the apparent aim of Jerome was to have a lunacy commission appointed. Thaw seemed to be very much depressed, and he said it was a combination of the weather and expert testimony, he said to one of the keepers.

Mrs. Evelyn Thaw arrived at the Tombs early in the morning. She told the new keeper of her automobile to return to the Lorraine and get Mrs. William Thaw. Then she had a talk with her husband. She was in very good humor. She said she was going to talk with her husband as long as she could, and she said, "I don't leave the Tombs until 1:30 o'clock, the time for the departure of all visitors. In the meantime, Mrs. William Thaw, accompanied by her husband, will be in the Tombs, called. They remained with the prisoner a very short time. After that they went to the office of Lawyer Delmas, where they got some letters for Mrs. William Thaw."

More Experts to Testify.

It was learned to-day that a number of physicians have examined Thaw in the Tombs. These doctors were to be called as witnesses, but it is said that a number of them declined to testify that Thaw is now sane. For that reason they were omitted from the defense. It is understood that Jerome has the names of these doctors. One of them is Dr. Allan McLane Hamilton, who will be called as a witness by Jerome.

It was reported to-day that the representative of the American Embassy at London, who has been mentioned in the testimony by young Mrs. Thaw, had written a letter to District Attorney Jerome. When asked about it, Jerome refused to make any comment one way or the other. It is known, however, that this man, who is one of the secretaries of the American Embassy at London, and still there, has written an explanation of his connection with the case to friends here.

In her testimony young Mrs. Thaw described him as having "smoked" up to her mother's room when they were in London in 1902, annoyed her mother, and that she learned then that he was "disreputable," and never had anything to do with him after that.

American Representative Writes.

According to this man, who is well known in this city, he met Mrs. Nesbit and her daughter when they arrived at the Claridge Hotel, in London, after they had left Paris. This was just after Mrs. Evelyn Thaw says she told her husband the story about White. The American representative had known Mrs. Nesbit and her daughter in this country, and he called on them in the hotel.

He says the female Mrs. Nesbit sick in bed. He took her daughter for a drive and for lunch. He asked her what she

was doing, and she said she was with Thaw. He was surprised, and asked her what had changed her opinion of Thaw, as in America she had told him that she could not tolerate Thaw, and that when he sent her presents of jewelry and things to the theater she returned them. She told this man, according to his explanation, that while she did not care a great deal for Thaw, he had been kind to her and her mother, and that he had promised to marry her in two years and educate her.

Finds Mrs. Nesbit Deserted.

The following day he called at the hotel again. He found Mrs. Nesbit still in bed and very much disturbed. She showed him a note which her daughter had left for her. In the note the young woman said she was going motoring with Thaw and that they would be gone for a fortnight and for Mrs. Nesbit not to attempt to follow them. The bill at the hotel had been paid up to that morning and Thaw's coat, Bedford now dead, and bed left behind ostensibly to take care of Mrs. Nesbit. But Bedford only had a little money of his own and Mrs. Nesbit did not have a very pleasant time. Finally she was brought back to this country by a woman friend, Miss Simonson, who paid for the steamer tickets.

This story is different from the one told by young Mrs. Thaw on the stand. She said that the representative of the American Embassy annoyed her mother, and Bedford was left with plenty of money to take care of her, Thaw paying all the bills.

End Not in Sight.

All next week will be taken up with the trial, which is interrupted by the appointment of a lunacy commission. After the cross-examination of Dr. Evans, Dr. Wagner, another of the defense's attorneys, will be cross-examined. After that it is probable that Mrs. William Thaw will go on the stand. Then the final hypothetical question will be submitted to Drs. Hammond and Jelliffe.

If Jerome puts in a case in rebuttal his principal fight will be made on the affidavit which young Mrs. Thaw is said to have made in the Hummel office. In that affidavit she denies that she ever told Thaw in Paris the story about White, and that she did Thaw was not true. This was a few days after she returned from Europe where she had been with Thaw in 1903.

Jerome expects to get the affidavit in an affidavit to the grand jury that it has to do with the vital question involved in the trial of whether she ever really told this story to Thaw.

Conviction Not Expected.

That there will never be a conviction is taken generally as a foregone conclusion. The hearing seems rather to be a public trial of modern social conditions. When the field has been exhausted of the possibility of "muck-raking," it is generally felt that Thaw will be allowed to go out and there will be a verdict of some sort returned. What this verdict may be, however vital to Thaw and his relatives, is of little real import to the spectators and the curious generally who have followed the developments of the trial with unabating interest.

What happens to Thaw few care. If the trial results in the upturning of enough "muck" to satisfy abnormal appetites hunger for news and gossip in life, they will consider an acquittal justified. If not, they would agree with a verdict against the defendant as a sort of punishment because his trial did not develop all the scandal they expected.

Not Concerned in Thaw's Case.

This is the common view taken of the case by those who know most about it through their constant attendance. So far they have revealed in the awful confessions of Evelyn Thaw. They anticipate other sensations when Thaw's mother takes the stand, and in Jerome's endeavor to contradict on rebuttal the testimony of White's victim, through an examination of her chorus girl friends who know other black secrets of Evelyn Nesbit's life, they expect to find the full realization of the sordidness their natures crave.

Law Fails to Reach Newspapers.

The assistant attorney general for the Post-office Department has decided that there is nothing in the law that would justify the Postmaster General in issuing an order forbidding the mails newspapers that print the "full disgusting particulars" of the Thaw trial. He has prepared an opinion in which he states that it is safe to infer that the members are, in a measure at least, subject to the same feelings and prejudices which the public generally entertains.

MEDAL FOR GIRL HEROINE.

Miss Guinan, Who Saved Man's Life, to Be First Woman Honored. Middletown, N. Y., March 2.—A. P. Duffy and B. C. Craig, of Washington, D. C., representing the Interstate Commerce Commission, were in this city to-day taking testimony in a case of heroism which the commission is considering for the purpose of awarding a Roosevelt medal to Miss Mary Guinan, a poor woman of this city, who saved the life of an aged merchant at an Erie Railroad crossing here.

Runyon was standing on the east-bound track waiting for a west-bound train to pass. A fast freight approached on the east-bound track. Miss Guinan saw that the old man would surely be struck and springing forward pushed him off the track and in an instant both were caught between passing trains. When the trains nearly touching them on each side Miss Guinan held the old man until one of the trains passed and then pushed him to safety.

The act giving a Roosevelt medal for cases of extreme bravery was passed two years ago, since which time only four medals have been given. If Miss Guinan receives one, it will be the first presented to a woman. The inspectors secured the evidence of a number of witnesses to the heroic act. Miss Guinan made no application for a medal, and it was nearly a month before her name was learned.

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DEFENSE WINS POINT

No Rebuttal to Prove Bywaters' Good Intentions.

SANITY EXPERTS ON STAND

Dr. Charles Clark Testifies That Strothers, Under Circumstances, Were Irrational at Time of Killing. Dr. Drury, for State, Says It Was Only Anger, Almost to Last Degree.

From a Staff Correspondent.

Culpeper, Va., March 2.—Counsel for the defense and prosecution in the Strother trial engaged in a second legal battle to-day, resulting in an additional victory for the former through the exclusion of practically all the rebuttal testimony planned to be introduced by the Commonwealth's attorneys. Through the ruling of Judge Harrison, the State has been limited in precisely the same manner that District Attorney Jerome, of New York, was restricted in the Thaw case.

The point at issue was the admissibility of the testimony of witnesses for the Commonwealth tending to attack the stated belief of the defendants, that William F. Bywaters was about to desert their sister, whom he had ruined and had been forced to marry, when they shot and killed him. The court ruled that no testimony was admissible except that having a bearing upon the state of mind of the accused, and that it made no difference what Bywaters really intended to do or what he told people other than his defendants he intended to do, unless it could be shown that these intentions or statements had been communicated to the defendants prior to the shooting.

Parallel Ruling in Thaw Case. Judge Harrison laid stress upon the fact that the testimony of the defendants and their witnesses in regard to what were supposed to be Bywaters' intentions was only admissible because of its value as provocation or in respect to its bearing upon the mental state of the accused at the time of the shooting. The court held that the testimony of Evelyn Thaw's testimony, in the Thaw case, in regard to the admissibility of Evelyn Thaw's testimony, was identical with that sustained by Judge Fitzgerald in the Thaw case in regard to the admissibility of Evelyn Thaw's testimony.

Besides the advantage gained by the defense through the exclusion of the Commonwealth's rebuttal testimony, counsel had an excellent day for their insanity expert and that of the State, Dr. Charles Clark, of St. Elizabeth's Asylum at Washington, stated his belief that the brothers mentioned in the hypothetical question prepared yesterday and read today were mentally irresponsible at the time of the shooting, and no cross-examination could shake his statements. Dr. W. F. Drury, superintendent of the Central State Hospital for the Negro Insane at Petersburg, Va., who was called by the State, was not so fortunate, and his testimony lost considerable weight, in so far as being favorable to the prosecution, concerned, after the grueling examination to which Attorney Lee subjected him.

Dr. Drury on Last Degree of Anger.

Dr. Drury made the statement early in his direct examination that he thought the act of shooting one of "violent anger, almost to the last degree." This was pointed out by Attorney Lee, who demanded to know what the "last degree" was. Dr. Drury said it was complete loss of control of the mind, and that it was impossible to tell just where sanity ends and insanity begins. Dr. Drury's testimony helped decidedly to draw that inference.

The trial dragged on to-day slowly because of several delays in the proceedings caused by legal discussions and the withdrawal of counsel to consult witnesses and authorities. There was less interest manifested by the citizens of the town and county than at any other stage of the trial, the nature of the proceedings being somewhat too technically legal for the delectation of many of those who thronged the courtroom during the early part of the trial.

Dr. Clark on Witness Stand.

Dr. Clark was called to the stand immediately upon the opening of the morning session. The long hypothetical question amended yesterday after much argument from both sides, was read to him by Attorney Moore.

"Having heard these facts, doctor, how would you characterize the mental condition of the brothers at the time of the homicide?" said Mr. Moore.

"I would characterize it as an irresistible impulse. Impulsive insanity it is called."

"Is mental derangement due to any one cause?"

"The causes are numerous."

"What is the principal cause of derangement?"

"Stress or strain on the mind."

"Can there be a derangement without a previous disease?"

"In my opinion there can be."

The expert was then turned over to Capt. Micajah Wood for cross-examination.

"If these men talked of killing Mr. Bywaters after the marriage, and did kill him, attributing the act to the fact that he had previously reasoned out and deliberated over, where is the insanity there?" asked Capt. Woods.

Attorney Moore objected.

Judge Harrison said the State had a right to put its theory of the case in the question.

It was answered by Dr. Clark, who said that the act itself was impulsive.

"Do you consider the sending of Philip to watch him an index of insanity?"

"No."

"Do you consider the placing of James' hand on his shoulder and the question, 'What are you going to do?' as an evidence of insanity?"

"No."

"Do you consider James thinking of how Bywaters might escape and running down stairs to intercept him, as an index of insanity?"

"No."

"Isn't temper or anger exhibited by actions, strong emotions?"

"Yes."

"Now, take a hungry man with a pistol in his hand. He goes into a bakery, points the pistol at the baker and says 'I want bread, I'll kill you if you don't give it to me.' The baker refuses. The hungry man shoots and kills him. Would you say that man was suffering from impulsive insanity?"

"I should say he was not fully responsible."

"When a man does a violent act as the result of fury or temper do you say he should be considered impulsive insane?"

"There is a difference between impulsive insanity and anger."

Had Testified in May Case.

You have testified for the defense in a number of cases?"

"Yes."

"What was the last case?"

"That of Mrs. May in Washington."

Capt. Woods started to ask Dr. Clark if he did not give it as his opinion that

Mrs. May was insane at the time of her death, and if the jury did not find her sane and guilty, but attorneys Moore, Jeffries, and Lee objected.

Capt. Woods and Mr. Lee held a consultation with Judge Harrison as to what the prosecution intended to do by the question. Capt. Woods said it was to prove that the jury found Mrs. May sane notwithstanding Dr. Clark's belief of her insanity. The question was not asked.

"Define insanity," asked Commonwealth Attorney Keith.

"That is difficult," said the witness. "Is it not the state of mind in which a person feels, acts, and thinks normally? Insanity, briefly, is a disease of the mind?"

"Yes."

Bull Run a Case in Point.

"Every man has in his mind that which under sufficient stress and strain will break and cause impulsive insanity?"

"Yes."

"When a man is possessed by fear he will do things impulsively, won't he?"

"Yes."

"That's what Bull Run was, wasn't it? Impulsive insanity possessed them?"

"Yes."

"I have never understood that until now," said Mr. Keith.

Mr. Moore asked several questions about stress and strain.

Mr. Keith explained: "You are paid by the government and supposed to be at the hospital all the time?"

"Yes."

"You are getting a compensation for testifying here?"

"No."

"Any amount agreed upon?"

"No."

"Stand aside."

Mr. Moore rallied to the defense of the expert showing that Dr. Clark was counsel for the defense were warm personal friends, that the question of money was not mentioned at the time Dr. Clark consented to come to Culpeper.

"You have an opinion to sell, have you, doctor?" asked Mr. Moore.

"No, I value my reputation too highly for any such thing as that."

Dr. Clark was excused.

Was Act of Violent Anger.

Attorney Jeffries announced that the defense was ready to rest, with the exception of calling one of its unimportant witnesses, who could be done at once if the court pleased. The court pleased, and the prosecution agreed. Commonwealth Attorney Keith then asked the indulgence of the court while he consulted with a witness to be introduced in rebuttal. This witness turned out to be Dr. Drury.

After stating to the jury his occupation, and that he had been connected with the hospital for the insane at Petersburg for twenty years, and had treated about 4,000 patients in that time, Dr. Drury was asked the hypothetical question. He seemed impressed with the sentimental side of the pathetic story, and when called upon to answer, hesitated a moment and then said: "In my opinion, the homicide was an act of violent anger."

Mr. Keith changed the form of the last portion of the question and laid stress upon the consultation held by the Strother family just prior to the shooting, at which it was decided to keep Bywaters from going away peacefully, if possible, and by force, if necessary.

Did Not Think Parties Insane.

"I think it was violent anger," repeated Dr. Drury, adding, as though as an afterthought, "almost to the last degree."

"If it were shown," continued Mr. Keith, "that immediately before and immediately after the shooting the brothers were sane, what would you say in regard to the state of their mind during the interval of the shooting?"

Dr. Drury said that he could not answer that without knowing about how long a time the shooting lasted. Mr. Keith said it was not definitely known how long, but that Dr. Drury could possibly determine how long it took when he heard a recital of the acts performed by the defendants during the shooting. The prosecutor then proceeded to detail each movement of the defendants, as embodied in their testimony.

"I don't think I could say that the parties were insane," said Dr. Drury.

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opened the argument about all the rebuttal testimony of the prosecution, and the jury was excused while counsel engaged in a wordy fray that lasted nearly an hour.

Mr. Moore, of the defense, argued that the prosecution intended to introduce testimony concerning what Bywaters did and said, but what never came to the attention of the defendants. Capt. Wood argued that they wanted to put on these witnesses in rebuttal to combat the testimony advanced by the defense attacking Bywaters' intentions and good faith in the matter of his marriage with the defendants' sister.

Both sides produced authorities, after more or less delay, and finally Judge Harrison took a hand in the discussion, and, after a few questions with the prosecution in regard to what they wanted to show, decreed his ruling whereby the rebuttal testimony was excluded.

To Prove Strothers in Error.

Mr. Payne was allowed to tell the court what his testimony was, and, after some argument, the court admitted it temporarily, and the jury was called to hear it. The court retained the right to have it stricken from the record if it should later prove to be as immaterial as the defense claimed.

Mr. Payne told of having driven Bywaters into town the afternoon of the wedding, and that at a certain point Bywaters got out of Payne's buggy and joined a man whose face Payne could not see. James Strother had testified that he met Bywaters that afternoon and that Bywaters got out of his own buggy and the negro driver drove away. The prosecution sought to show that Mr. Strother was mistaken in this respect. The value of the point not having been made clear to the court, Judge Harrison said he would reserve the right to have the testimony stricken out.

The colored man, James Clark, whom Strother has stated was driving Bywaters at the time, was called and stated that at that time Bywaters' buggy was in his stable.

State Summons Mr. Gaines.

The State announced that it would produce one more witness, Dr. Jannetta, of the insane hospital at Staunton, Va., and asked the court to issue a subpoena for E. L. Gaines, brother-in-law to the defendants, the only member of the family who had been in the hospital and who had not testified. Mr. Keith wanted Mr. Gaines called as an adverse witness, in order that the State might cross-examine him. After objection by the defense the court agreed to call Mr. Gaines, restricting the defense to questioning the witness solely along lines of rebuttal.

This move by the prosecution is not expected to be of material assistance to the State, as it is reported that the reason for the defense not having called Mr. Gaines is that for many years, since receiving a blow on the head, Mr. Gaines has suffered from loss of memory.

The court will receive suggestions for instruction from both sides Monday, and arguments will begin probably Tuesday.